SHALIMAR MALAY PLC v. MAJLIS DAERAH KUALA SELANGOR

HIGH COURT MALAYA, SHAH ALAM
AZIMAH OMAR JC
[ORIGINATING SUMMONS NO: 24-992-09-2014]
13 MARCH 2015

LOCAL GOVERNMENT: *Rates – Arrears of assessment – Revised annual value and assessment – Appeal against decision of district council – Assessment rates – Whether appellant denied of its rights to be heard to submit its objections – Power to impose rates – Whether respondent rendered services to appellant – Whether appellant benefited from respondent's services – Duty to pay assessment rates – Whether a public obligation – Method of valuation – Whether annual value of properties based on open market value of properties – Whether valid – Local Government Act 1976, ss. 2(d), 127 & 145*

The appellant owned and operated a palm oil estate within the district of Kuala Selangor which was known as the Shamilar estate ('the estate'). The estate consisted of 17 different lots, including Lot 27. The respondent was the District Council of Kuala Selangor which had jurisdiction over properties and lands within the district of Kuala Selangor. The respondent's amendment to the valuation list was made in view of the Government of Selangor's *gazette* which added new boundaries to the district of Kuala Selangor, which was within the respondent's jurisdiction. The amendment of the boundaries had added Lot 27 within the jurisdiction of the respondent. The appellant issued a letter dated 18 May 2009 objecting to the execution of the revised annual value and assessment imposed by the respondent. The respondent considered the objection and reduced the annual value from RM1,436,900 to RM1,005,840 and the annual assessment rate was reduced from RM43,107 to RM30,175.20. Dissatisfied, the appellant issued a further objection ('second objection') and prayed for either a waiver of the annual assessment or further reduction of the annual value and/or assessment rate. Subsequent to the second objection, a meeting ('first meeting') was called between the Malaysian Palm Oil Association ('MPOA'), the appellant and the respondent. The minutes of the first meeting revealed, *inter alia*, the grievances regarding the revised annual value and/or assessment rate. However, nothing conclusive was decided in the first meeting. Subsequent to the said meeting, the respondent issued a demand against the appellant for the outstanding assessment rates on the appellant's properties. In cognisance of the second objection, the respondent invited the appellant ('notice of invitation') for a further meeting ('second meeting') which was fixed on 10 June 2014. However, the appellant alleged that it received this notice on the same date when the second meeting was held. As such, the appellant argued that its right to be heard had been deprived. A further objection was issued by the appellant

and the respondent asserted that the council decided, *inter alia*, not to consider the appellant's application for an exception of the assessment since the local authority with the approval of the state authority was empowered to impose the rate pursuant to s. 127 of the Local Government Act 1976 ('the Act'). Pursuant to s. 145 of the Act, the appellant filed an appeal to this court against the decision of the respondent. It was contended that (i) the appellant was denied of its rights to be heard before the respondent to air their objections on the revised valuation list and the annual value and/or assessment rate on the appellant's properties; (ii) the respondent did not have the right to impose rates on the properties considering the fact that the respondent did not render services to the appellant; and (iii) the annual value of the properties could not be based on the open market value of the properties. It was further argued that (a) the calculation which was applied by the respondent in using the open market value fell squarely within the ambit of proviso (c) of s. 2 of the Act; and (b) the respondent had used a different method of evaluation on Sime Darby's plantations compared to the appellant's estate.

Held (dismissing appeal with costs):

(1) The appellant received the notice of invitation at least a day before the date of the second meeting. The appellant admitted that their representative attended the second meeting on their behalf. As such, the interest of the appellant was already represented during the meeting where their objections were heard *vide* their representative. The appellant's voice was validly echoed before the respondent which gave them the statutory opportunity to have their grievances aired and heard. As such, the appellant's objections were appropriately heard and considered by the respondent. (paras 36, 45, 47 & 52)

(2) The minutes of the meeting indicated that the objections by the plantation owners were dealt with and discussed. The respondent would not have invited all the plantation owners, including the appellant to the second meeting if they had not intended to address the plantation owners' grievances. As such, there was never any impediment against the appellant's rights to be heard. (paras 59, 61, 62 & 63)

(3) Section 4(3) of the Act confers power to the state authority to alter the boundaries of any local authorities. The respondent's authority to impose rates on lands within its jurisdiction emanates from s. 127 of the Act. Thus, the authority of the respondent to amend the valuation list to cater to the *gazette*'s inclusion of Lot 27 stems from s. 144(1)(f) of the Act. The amendment to the valuation list and the rates were made in accordance with the Government of Selangor's *gazette* to include Lot 27 in the respondent's boundaries and/or jurisdiction. As such, the respondent was within its rights and jurisdiction to make such amendment to the valuation list and the rates. (paras 65 & 66)

(4) *Vide* s. 127 of the Act, the local authority is empowered to collect revenues in order for the local authority to be able to render such services which it is empowered to perform. The obligation to pay rates to enable the local authority to perform its powers for the public's benefit at large is a statutory obligation. This is coherent with the power of the local authority under s. 127 of the Act to impose rates as is deemed necessary. There is no duty owed by the respondent to render services directly and personally to the appellant in its properties. The power of the local authority is to be exercised for the benefit of the public at large and not specific to the benefit of any private interest and/or interests. (paras 75, 78 & 80)

(5) The respondent provided various services throughout the area surrounding the appellant's properties, particularly the waste/rubbish disposal services and the public bus stops within the district of Kuala Selangor. There was no evidences adduced that the respondent had provided bus stop services and the waste/rubbish disposal services mainly for the benefit of the residence within the surrounding area. Further, there was no evidence adduced that the appellant or any of its employees had never benefited from the array of bus stops and sanitation provided by the respondent. It was more probable than not that the appellant or any of its employees had utilised these services be it in sanitation or purposes of logistics and transportation. (paras 80 & 81)

(6) The appellant had directly benefitted from the services rendered by the respondent. The public at large, including the appellant, had benefited from the bus stops as a form of public transportation. Even if the appellant itself or any of its members were in their own private vehicle driving around the roads under the jurisdiction of the respondent, the appellant had indeed directly benefited from the respondent's services. Further, in relation to the sanitation services, the public at large, including the appellant, had directly benefited from the waste management which promotes a healthier environment to dwell and work. (paras 82 & 83)

(7) The priority of the imposition of rates is not hinged on the benefit afforded and given to any specific taxpayer and/or ratepayer but is hinged on the benefit afforded to the public at large. The appellant may not eschew itself from its public and statutory obligation to pay rates for the benefit of the public at large. It was not incumbent upon the respondent to render personal and direct services within the appellant's properties so as to obtain the rights to impose rates. The respondent had already rendered the services that they were empowered to do for the benefit of the public at large. (paras 85 & 87)

(8) The respondent relied on proviso (d) of s. 2 of the Act and not proviso (c). The respondent's decision in making the assessment was not on the grounds that the land was partially occupied or partially built upon or was vacant. The minutes of the first meeting showed that the respondent had relied on proviso (d) as it was difficult for the respondent to estimate the gross annual rent, owing to the fact, *inter alia*, that the land was never let to any other persons. It was compelling that the respondent would not have sufficient information to make this calculation of the estimated gross annual rent. As such, this case fell within the ambit of "insufficient evidence" under proviso (d) of s. 2 of the Act. Further, the respondent's decision to base their calculation on the open market value of the appellant's estate was a valid method of calculation by the purview of proviso (d) of s. 2 of the Act. (paras 104 & 106)

(9) The respondent presumed that the land was in a vacant state and had not deemed that the land was indeed vacant. The decision of the respondent was not dependent on the variable that the appellant's properties were occupied or built or otherwise but was on the fact that they had insufficient information to gauge the gross annual rent. Hence, it was within the authority of the respondent, upon its opinion, to apply any valuation method it sees as appropriate. (para 108)

(10) An evaluation must include the inherent value of the land itself and not just the occupation or buildings on the land. On the facts, there was no evidence to prove that the respondent had given a different method of calculation on the annual value/assessment to Sime Darby Bhd. It was peculiar and questionable as to the manner in which the MPOA's director was able to know that such survey was conducted without having any documents to prove it. The most natural conduct to prove such averment was to exhibit such survey but the appellant failed to do so. Thus, in the absence of any proof, the averment was merely hearsay evidence. (paras 111-116)

Case(s) referred to:

Arsenal Football Club Ltd v. Ende [1979] AC 1 ***(refd)***

Datuk Bandar Kuala Lumpur v. Bukit Jalil Estates Sdn Bhd & Another Case [1988] 1 CLJ 763; [1988] 1 CLJ (Rep) 25 SC ***(dist)***

Inland Revenue Comrs v. National Federation of Self-Employed and Small Businesses Ltd [1981] 2 AER 93 ***(refd)***

Majlis Daerah Dungun v. Tenaga Nasional Bhd [2006] 2 CLJ 1078 CA ***(refd)***

Ng Chin Siu & Sons Rubber Estate Sdn Bhd v. Datuk Bandar, Kuala Lumpur [1994] 1 CLJ 283 HC ***(dist)***

Prudential Assurance Malaysia Bhd v. Kerajaan Malaysia [2003] 6 CLJ 28 HC ***(refd)***

Legislation referred to:

Interpretation Acts 1948 and 1967, s. 17A

Local Government Act 1976, ss. 2, 4(3), 39, 63, 72(1), 127, 130, 142(2), 144(1)(f), 145(1)

For the appellant - John Matthew; M/s Christopher & Lee Ong
For the respondent - Mohamed Ibrahim (Fazlin Ilani with him); M/s Ibrahim & Fuaadah

Reported by Kumitha Abd Majid

JUDGMENT

Azimah Omar JC:

[1] This originating summons (encl. 1) is an appeal filed by a company known as Shalimar Malay PLC under s. 145(1) of the Local Government Act 1976 ("Act"). The appellant which was formerly known as The Shalimar (Malay) Estate Company Limited is a company incorporated under the Companies Act 1965. It owns and operates a palm oil estate within the District of Kuala Selangor which is known as the Shalimar Estate ("estate").

[2] The estate consists of 17 different lots. Those of which are Lots No. 27, 441, 442, 443, 445, 446, 451, 452, 453, 454, 455, 1296, 1297, 1298, 1299, 1300, and 1301 ("properties") with Lot 27 being the majority of the estate bearing 85% of the total of the estate covering 600 acres of land ("Lot 27").

[3] The respondent in this present case is the District Council of Kuala Selangor or Majlis Daerah Kuala Selangor having jurisdiction over properties and lands within the District of Kuala Selangor.

[4] The appellant in this case being dissatisfied with the respondent's decision and demand for outstanding assessment rates amounting RM87,940.83 which was revised *vide* s. 144 of the Act when the respondent had amended the valuation list regarding the appellant's properties after hearing of the appellant's objection on 10 June 2014. The respondent has decided to dismiss the appellant's objection against the revised assessment rate.

[5] The respondent's amendment to the valuation list was made in view of the Government of Selangor *Gazette* dated 16 March 2009 which had added new boundaries to the District of Kuala Selangor (within the respondent's jurisdiction) which is appended together with plan No. 1414. (see exh. SJ-5, encl. 4). The amendment of the boundaries had in turn, added Lot 27 within the jurisdiction of the respondent and this, the respondent sought to collect rates from the appellant in accordance with the amended boundaries set by the *gazette*.

[6] It must be noted from the outset that the propriety of the respondent's authority in according to the *gazette* and including Lot 27 in the new amended valuation list is not an issue in contention. The contention of the appellant is on the propriety of the annual/assessment rate which was imposed against the appellant's property.

[7] The respondent then had issued a notice of amendment of valuation list dated 29 April 2009 (to include Lot 27) to the appellant under s. 144 of the Act. (See exh. S-3, encl. 2)

[8] In response to the notice, the appellant through its Management Agent, Agro Harapan Lestari Sdn Bhd ("agent") had issued a letter objecting ("first objection") the execution of the revised annual value and assessment to the respondent dated 18 May 2009. (See exh. S-4, encl. 2)

[9] In reply to the first objection, the respondent considered the objection and accordingly reduced the annual value from RM1,436,900 to RM1,005,840 and the annual assessment rate was reduced from RM43,107 to RM30,175.20 on Lot 27.

[10] Still dissatisfied with the reduction, the appellant issued a further objection ("second objection") through its letter dated 27 August 2009. The appellant prayed for either a waiver of annual assessment or further reduction of the annual value and/or assessment rate. (See exh. S-6, encl. 2)

[11] Thereafter, the respondent had issued similar notices of the revised annual value and/or assessment rates regarding the appellant's other 16 lots besides Lot 27 on 6 October 2009. (See exh. S-7, encl. 2)

[12] Subsequent to the second objection, a meeting ("first meeting") was called between the Malaysian Palm Oil Association ("MPOA"), the appellant and the respondent at the respondent's office on 26 February 2013. A minute of the meeting was prepared and was issued by the respondent which was given to the appellant. (See exh. S-8, encl. 2). A plain reading of the minutes of the first meeting would reveal that the main purpose of the first meeting is to allow the opportunity for estate owners alike the appellant (inclusive) to air their objections and/or grievances regarding the revised annual value and/or assessment rate. At no point in time that this particular meeting was intended to conjure a final decision on any of the issues raised in the meeting.

[13] The issues raised were concluded with either for a further action to be carried out by a party "tindakan" or for the sake of announcement, explanation or information "makluman". There was nothing conclusive in the first meeting after all of the complaints (inclusive of respondent's complaints) were heard. Even the tone of the appellant's affidavit in support (encl. 2) indicates that no decision was made:

(Para 11(d)(ii), page 7, enclosure 2):

> … bahawa nilai tahunan tidak sepatutnya didasarkan nilai pasaran terbuka kerana tanah-tanah ini bukannya tanah kosong dan merupakan tanah pertanian. Bantahan ini dipersetujui untuk dipertimbangkan oleh Responden dan hal ini akan dirujuk kepada Kamar Penasihat Undang-Undang Negeri.

(Para 11(d)(iii), page 7, enclosure 2):

Mesyuarat tersebut memutuskan bahawa MPOA membuat susulan kepada keputusan dari Kementerian-kementerian tersebut bagi satu keputusan berkenaan pengenaan kadar tahunan/taksiran tahunan keatas tanah-tanah ladang.

[14] Subsequent to the first meeting, the respondent had issued a demand against the appellant *vide* their letter dated 18 April 2014 for outstanding assessment rates on the appellant's properties. (See exh. S-9, encl. 2)

[15] In response thereto, the appellant through its agent's letter dated 16 May 2014 had informed of their objection (second objection) to the assessment rates and also that the matter was still pending a hearing date. (See exh. S-10, encl. 2)

[16] In cognisance of the second objection by the appellant, the respondent had invited the appellant for a further meeting (second meeting) set on 10 June 2014 *vide* the respondent's notice dated 4 June 2014 to hear the appellant's objection. (See exh. S-11, encl. 2)

[17] Briefly at this juncture, one of the appellant's contention on this notice was that the notice was allegedly only received by the appellant on 10 June 2014 (same date of the second meeting) rendering them to be unable to attend the hearing. Thus, allegedly the appellant's right to be heard under s. 142 of the Act had been deprived. This contention would further be addressed later in this judgment for a full discourse on the evidence adduced into court by the parties.

[18] However, it is pertinent to note that even at this juncture, the appellant had contradicted itself on the issue of attendance at the second meeting. It was averred in the appellant's own affidavit that one, Mr Ravidranath had already attended the second meeting on their behalf (see para. 14(c) of encl. 2):

(c) namun, seorang pengarah dari MPOA (iaitu En. Ravidranath G. Menon) telah hadir diri dan pengarah tersebut *telah mewakili pemilik-pemilik ladang-ladang pokok kelapa sawit termasuk Perayu pada pendengaran bantahan pada 10.6.2014.* (emphasis added)

[19] The complaints (inclusive of the appellant's complaints) were addressed again on the second meeting of which the minutes of the meeting was prepared and issued to all parties who attended the second meeting (inclusive of the appellant *vide* Mr Ravidranath). (See exh. SJ-3, encl. 4). It is the respondent's averment that there were no discussions or any conclusions within the second meeting to contemplate for another further date for a hearing and/or meeting as everything was already concluded.

[20] However, the appellant had issued a letter dated 7 July 2009 (third objection) to the respondent claiming that they were deprived as plantation owners of the rights to be heard and that the second meeting was only focused on the grievances of house owners and further requested for another hearing date.

[21] Subsequent to the appellant's third objection, the respondent have issued a letter dated 18 August 2014 informing of the respondent's decision after the second meeting was concluded. (See exh. S-1, encl. 2). The decisions made were that:

(a) the objection hearing in relation to the holdings of the appellant (that is the said lots) was heard on 10 June 2014;

(b) the council meeting held on 25 June 2014 decided not to consider the application of the appellant for an exemption of the assessment as the local authority with the approval of the state authority was empowered to impose the rate pursuant to s. 127 of the said Act;

(c) the annual value of the said lots has been amended from 10% to 5% of the open market value whereas the rate imposed pursuant to s. 130 of the said Act has been amended from 3% to 2%; and

(d) the appellant could appeal against the decision of the respondent pursuant to s. 145 of the Act.

[22] It was against the above decision of the respondent that the appellant filed their appeal before this court. Three grounds of appeal were raised by the appellant, namely:

(i) The appellant was denied of its rights to be heard before the respondent to air their objections on the revised valuation list and the annual value and/or assessment rate on the appellant's properties.

(ii) The respondent does not have the right to impose rates and on the properties considering the fact that the respondent does not render services to the appellant.

(iii) The annual value of the properties cannot be based on the open market value of the properties.

[23] This court is also mindful that besides the above grounds of appeal, in its affidavit the appellant had also contended that there was an unfairness of the services rendered to its estate comparatively to Sime Darby's estates.

[24] Now, the issue on the method of assessment, services rendered by the respondent and the alleged unfairness are to the court's view the substantive issue within this dispute while the remainder issue on the rights to be heard is verily a technical issue on the proper procedure of objections and appeals afforded under ss. 142, 144 and 145 of the Act.

[25] Thus, before delving into the substantive portion of the dispute, this court shall first deal with the issue on the appellant's right to be heard. A

Ground I: Was The Appellant's Rights To Be Heard Impeded By The Respondent?

[26] To recap, the appellant's contention on this issue is as follows: B

(a) The appellants were deprived of their rights to be heard as they were unable to attend to the second meeting on 10 June 2014 due to the short notice by the respondent.

(b) The opportunity to have their objections heard is afforded (in the mandatory) under s. 142(2) of the Act which reads: C

> All objections shall be enquired into and the persons making them shall at such enquiry be allowed on opportunity of being heard either in person or by an authorised agent.

[27] The court shall now deal with this complaint of deprivation in two separate parts. That being the conduct of the complaints by the respondent before the second meeting on 10 June 2014 and the general conduct of the respondent in dealing with the objections. D

[28] This court acknowledges the mandatory provision set forth under s. 142(2) of the Act with regard to inquisition of all objections and opportunity to be heard. Section 142(2) clearly provides that all objections shall be enquired and in respect of the appellant's objection, the appellant or its agent shall be given the opportunity to be heard at the enquiry. However, this court had earlier mentioned that from the evidence before the court, there was no basis in the appellant's contention that it was deprived of its right to be heard. Close scrutiny of the evidences reflect otherwise: E F

(i) The Conduct Of The Second Meeting On 10 June 2014

[29] The appellant in its desperate (*albeit* fallible) attempt to prove the alleged deprivation had contended that they were unable to attend the second meeting due to the fact that they have only received the notice for the second meeting dated 4 June 2014 on the day of meeting itself that is 10 June 2014. Now, against this contention, the court has scrutinised and considered evidences and even absence of evidences which goes against the appellant in this regard. At multiple levels of the appellant's own evidence, the appellants have contradicted themselves against their own contention. G H

(ii) Appellant's Letter Dated 7 July 2014 Signed Its Director, Rizan Jiffrey (exh. S-12, encl. 2) Admitted To Being Informed Of The Meeting

[30] It is clear that the appellants are employing tactics in a desperate attempt to raise any probable issues to defeat the decision by the respondent. One such attempt is in their contention on the notice for the second I

meeting. The appellant had even referred to the notice dated 4 June 2014 without much objection to the propriety of the notice.

> We refer to our letter of May 16, 2014 and to the notification dated June 4, 2014 from your good office informing us that the meeting on the hearing of objections would be held on June 10, 2014.

[31] In this 7th July's letter, the appellants themselves had admitted to be informed of the hearing on 10 June 2014.

[32] Furthermore, the only ground contended in the appellant's letter was that the meeting was focused to the grievances of the house-owners. Never at any point in time that the appellant contended anything on the receipt of the notice calling for the second meeting. It was never raised.

[33] If indeed the appellant was short-served with the notice, the appellant should have raised the issue in their letter. Instead the appellant have admitted in total opposite of their contention; that they were informed of the second meeting scheduled on 10 June 2014.

(iii) The Pos Eskpres Search Records Adduced By The Respondent (exh. SJ-6, encl. 9)

[34] The court is also mindful that the respondent had indeed exhibited a supposed proof of fax transmission that the respondent had faxed the notice to the appellant as early as 5 June 2014. However, the court does not intend to consider this piece of evidence as the exhibited proof is not a transmission report but merely an internal record of transmission of the respondent. Nevertheless, this does not at all deter the judgment of this court as there are other compelling evidences which proves that sufficient notice was given to the appellant (inclusive of the admission discussed earlier above).

(iv) Online Search By The Respondent

[35] The respondent *vide* its averment in encl. 9 (afidavit jawapan responden (2)) had stated that the respondent had conducted an online search on the delivery status of the notice of invitation which found that the notice was successfully delivered to the appellant on 9 June 2014. (See exh. SJ-6, encl. 9).

[36] It is evidently clear that at the very least, or latest, the respondent have received the notice one day before the date of the second meeting. And this seems to be verily more coherent and probable considering the fact that the appellant themselves had averred and admitted to send a representative to attend the second meeting on their behalf (this would be discussed further later).

[37] The respondent exhibited the proof of postage "BORANG PENGHANTARAN POS EKSPRES" for the delivery with the reference number of "Bil (4)dlm.MDKS E/503/01". A

[38] The above reference number corresponds with the reference number of the notice dated 4 June 2014 notifying the appellant of the second meeting. Furthermore in the same proof of postage, the registration number for that delivery is "LE11 769 323 8MY". To which, the above registration number corresponds with the online search which was conducted and exhibited in encl. 9 of the respondent. The search result reads: B

C

Tracking Shipments

Detail result for Parcel No : LE117693238MY

Date	Time	Process	Office
09-Jun-2014	10:32:20	Delivered	PPL KUALA LUMPUR

D

[39] It is abundantly clear that the appellants indeed received the notice at least a day before the second meeting was heard and definitely not on the day of the meeting itself. The evidence clearly goes against the appellant's contention.

(v) The Appellant's Own Affidavit Admitted That The Appellant Managed To Attend The Second Meeting On 10 June 2014 E

[40] This court must also emphasise here that the appellant's contention is seemingly at odds with its own ground of appeal. It is verily evident from the ensuing discourse herein that the averments of the appellant are baffling, incoherent, inconsistent and in total clash with each other and verily convoluted. F

[41] In one breath, the appellant claims that they are deprived of the rights to be heard before the respondent as they were unable to attend the second meeting which was held on 10 June 2014 (due to the fact that the notice was short-served which the court disagrees above). However, in a multitude of aspects of its evidence, the appellant itself admitted that they were able to attend the second meeting by way of representation. This is evident in the appellant's own letters and even the appellant's own affidavit in support of encl. 1 namely encl. 2. G

[42] While also in another breath, suddenly the appellant by way of their own affidavit (encl. 7) affirmed by Mr Ravindranath a/l Gangandharan Menon, denied the representation which was averred by the appellant's own earlier encl. 2. H

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[43] This court shall address these contradictions separately:

(i) First Contradiction – The Appellant's Own encl. 2 (Affidavit In Support)

[44] Against the appellant's submission on not being able to attend the second meeting, it is blatantly clear that the appellant had derailed itself from this contention when the appellant itself admitted in encl. 2 that they were able to get a representative to attend the second meeting on their behalf. This is clearly averred by the appellant at para. 14(c) of encl. 2, the affidavit in support:

> (c) ..., a director from the MPOA (namely, Mr Ravindranath G. Menon) was present and this director represented the owners of palm oil plantations including the Appellant at the objection hearing on 10.6.2014.

[45] It is plain and obvious that the interest of the appellant was already represented by Mr Ravindranath (MPAO Director) during the meeting. The appellant had acknowledged such representation by its own volition. It would be absurd that the appellant now intends to go against its own averment. It is clear they were able to attend this meeting. Their own affidavit averred so.

(ii) Second Contradiction – The Appellant's Letter Dated 7 July 2014

[46] Even the appellant's letter 7 July 2014 (exh. S-12, encl. 2) admitted in para. 2 that the MPOA Director had attended the second meeting on their behalf. The letter reads at para. 2:

> 2. We also note that a Director from the Malaysian Palm Oil Association ("MPOA") was present at the objection hearing on June 10, 2014. The Director of the MPOA represented the owners of palm oil plantations in the area including ourselves.

[47] Hence, it is this court's judgment that from the documentary evidences ventilated earlier, it is crystal clear without a single iota of doubt that the appellants indeed managed to attend the second meeting on 10 June 2014 to have their objections heard *vide* their representative, the MPOA Director. In this case, when the appellant had voiced out its objections on the rates imposed and objections were heard, the annual value and the rates were then revised, then, it could not be said here that there is deprivation of rights to be heard. The voice of the appellant was validly echoed before the respondent, giving them the statutory opportunity to have their grievances aired and heard.

[48] There were nothing raised by the appellant in this letter to the effect that the appellant raised the issue of not being represented and/or not being able to attend the second meeting. None at all. In fact, the appellant took the total opposite standing that they managed to attend the meeting by having been represented by the MPOA Director.

(iii) Third Contradiction – MPOA Director's Affidavit For The Respondent (encl. 7)

[49] Now, against the admission that the appellant was represented, out of the blue the affidavit affirmed by the MPOA Director sought to negative the appellant's contention on representation during the second meeting. The appellant is at odds with their own averments in their evidence.

[50] The averment in encl. 7 at para. 7 sought to defeat the notion of representation set forth by the appellant itself:

> I am aware that the Respondent fixed an objection hearing on 10.6.2014 on the proposed imposition of annual rates/assessments on certain oil palm plantation lands belonging to KL-Kepong Country Homes Sdn Bhd and Kuala Lumpur Kepong Berhad. I accompanied the representatives of these 2 plantation owners to the office of the Respondent on 10.6.2014. It must be mentioned that before I went for the hearing on 10.6.2014, I had also made a telephone enquiry with Mr. Ravindran Palpanathan, Manager of Shalimar Estate whether his estate has also been called for a hearing on the same and he replied in the negative.

[51] It is abundantly clear that the appellant itself is unsure of their stance on the representation. Such contradiction warrants this court to question the integrity of the appellant's case and the veracity of the appellant's evidence.

(vi) General Conduct Regarding The Appellant's Objections

[52] Notwithstanding the finding above that indeed the appellant was not at all deprived of their rights to be heard, it is already abundantly clear that besides the conduct of the second meeting, the objections were appropriately heard and considered by the respondent.

[53] As discussed earlier, the appellant had written to object the revised valuation list and rates for multiple times. The respondent had afforded the appellant its right to be heard not only in the second meeting but in also in other instances revolving the appellant's objections.

(a) First Reduction In Consideration Of The Appellant's First Objection Of 18 May 2009

[54] Upon receiving the appellant's first objection, the respondent had in fact taken their objection into consideration and substantially reduce the annual valuation by a whopping RM431,060 while the assessment was reduced by a long-shot of RM12,931.80.

(b) First Meeting Hosted By The Respondent To Cater To The Objections Of The Appellant And Other Plantation Owners

[55] In cognisance of the appellant's further objection against the reduced annual value and assessment above, the respondent again, afforded the appellant with further opportunity to be heard and voice out their further objection in this first meeting.

(c) Conclusion And Decision After The Second Meeting Dated 18 August 2014

[56] And in fact, after affording the appellant their rights to be heard and voice out their objections by attending the second meeting. And upon this second meeting the decision of the respondent was to give a further reduction from the initial prior reduction. The annual value of the said lots has been amended from 10% to 5% of the open market value whereas the rate imposed pursuant to s. 130 of the said Act has been amended from 3% to 2%.

[57] At every instance the appellant sought to make an objection, the respondents has done their level best to afford the appellant its rights to be heard in holding meetings upon meetings and in fact had made reductions upon the objections made.

[58] It is apparently clear, inclusive of the conduct second meeting, that the respondent for numerous times has afforded the rights to be heard to the appellant. The respondent had referred to the case of *Majlis Daerah Dungun v. Tenaga Nasional Bhd* [2006] 2 CLJ 1078 which decided the following:

> The respondent was aggrieved by the amendment of the valuation list ... the respondent had to make an objection in writing to the appellant under s. 144(3) of the Act. The Appellant had to "hear" the objection and make a decision as to whether the respondent's objection was justifiable. The "hearing" before the appellant would be the proper forum where the respondent can voice its grievances.

[59] Indeed, the respondent had afforded and furnished the appellant the proper forum (first and second meetings) to hear the grievances of the appellant before the respondent itself. Thus, it is the court's finding herein that there was never any impediment against the appellant's rights to be heard.

[60] Now, on the contention that the second meeting was conducted only to cater to the grievances of the house owners which was raised in the appellant's letter dated 7 July 2014 and was later totally abandoned in the appellant's submission. Simply put, the only ground that the appellant called for a further meeting after the second meeting was not because of the alleged short-notice or the inability to attend, but instead on the tone the second meeting took place. For the purpose of completeness, this court shall briefly allude to this contention.

[61] Against this contention, the minutes of the meeting clearly indicate that the objections by the plantation owners were dealt with and discussed. There is a dedicated section in the minutes of the second meeting (exh. SJ-3, encl. 4) that deals with objections of plantation owners alike:

> 4.0 SESSI MENDENGAR BANTAHAN/SYOR-SYOR PERTIMBANGAN
>
> 4.1 Terdapat 47 pemilik yang membuat bantahan pada kali ini melibatkan ... dan pemilik tanah ladang estet.

[62] And the summary in paras. 4.3 (i) until (v) clearly includes the grievances which were forwarded by the plantation owners themselves and not only the house-owners. The respondent would not have invited all of these plantation owners (appellant included) to the second meeting if they had not intend to address the plantation owners' grievances.

[63] Thus, in cognisance of the above, it is this court's finding that the appellant's rights to be heard have never at any point in time been impeded by the respondent.

[64] The appellant had also questioned the legitimacy of the respondent's authority to impose rates upon the amended valuation list in including Lot 27. The appellant in other words is questioning whether the respondent has jurisdiction to make amendments on the valuation list to include Lot 27 and impose rates. This is another issue raised by the appellant in their affidavit but was abandoned in their submission. On this issue, suffice to say that this court is in total agreement with the respondent's submission on the authority of the respondent to impose rates and amend the valuation list in view of the *gazette* of the State of Selangor (exh. SJ-5, encl. 5) which broadens the respondent's jurisdiction to include Lot 27.

[65] The *gazette* amending the boundaries of the respondent was a valid and lawful *gazette* issued by the Government of Selangor under s. 4(3) of the Act that confers power to state authority (in this case the Government of the State of Selangor) to alter the boundaries of any local authorities. The authority of the respondent to impose rates on lands within its jurisdiction emanates from s. 127 of the Act. And thus, the authority of the respondent to amend the valuation list to cater to the *gazette*'s inclusion of Lot 27 stems from s. 144(1)(f) of the Act which stipulates that:

> (f) any change to the rateable holding effected by any law relating to planning as a result of which the value of the holding has been increased or decreased, the Valuation Officer may at any time amend the Valuation List accordingly and rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended.

[66] It is sufficiently clear that the amendment of the valuation list and the rates were made in accordance of the Government of Selangor's *gazette* to include Lot 27 in the respondent's boundaries and/or jurisdiction. Thus, the respondent is within its rights and jurisdiction to make such amendment to the valuation list and the rates.

Ground II: The Respondent Does Not Have The Right To Impose Rates And On The Properties Considering The Fact That The Respondent Does Not Render Services To The Appellant

[67] Now, it is the contention of the appellant that direct services from the respondent is a condition precedent or a requisite to be fulfilled before the respondent may have the rights to impose rates. It must be noted here that the appellant's contention is not supported by any direct authority be it any statutory provision or decided precedents.

[68] What was instead put forth by the appellant was their own interpretation of the different sections of the Act and also the Interpretation Acts which was stringed together (to their own benefit) to prove that it is incumbent upon the respondent to provide services before they have the rights to impose rates. Hence, it must be appreciated clearly that this preposition is devoid of any direct authorities.

[69] However, it also must be noted that this particular preposition coined was made specific to the alleged duty of the respondent to provide waste/rubbish collection services within the private properties of the appellant. This is how the appellant sought to conjure this preposition:

[70] Section 127 of the Act states that the local authority (the respondent in this case) may with the approval of the state authority to impose rates for the purposes of this Act.

[71] The appellant continued to zoom in and define what is this "purpose of this act". It is evident here that what was intended to be employed by the appellant was to adopt the purposive approach of interpreting statues. However, the appellant sought to define this "purpose" in reference to s. 72 of the Act which instead enumerates the powers of the local authority.

[72] Section 72(1) of the Act only enumerates the authority of the respondent to maintain and carry out sanitary services. Not at any point in time it stipulates that it is incumbent that the respondent to do so. The sentence used is:

> (1) A local authority shall have power to do all or any of the following things, namely ...

[73] Not at any point in time that the wording of s. 72 is in the mandatory meaning that the respondent as local authority is mandatorily imposed to carry out such duty to earn the rights to claim rates. The words

used in s. 72 is clearly "shall have power to do" and not at any time "shall do" all or any of the following things.

[74] The appellant had also referred to s. 17A of the Interpretation Acts 1948 and 1967 in that in the interpretation of an Act, the interpretation which would promote the purpose of an Act shall be preferred. However, as had been made clear in the finding above, s. 72 of the Act is a provision defines the power which the local authority possesses and not the particularly the purpose of the Act.

[75] In fact, the more probable interpretation of the above provision, if at all we look to the purpose of this Act, is that s. 72 of the Act is the provision which empowers the local authority to provide services. It makes more legal sense that the local authority is empowered also under s. 127 of the Act to collect revenues (in the form of rates) in order for the local authority to be able to render such services which it is empowered to perform.

[76] It is beyond any logic or reason that the appellant saw it fit to interpret the whole purpose of the Act in reverse. In other words, there must be the means to perform before the local authority can perform. This, indeed is the more preferred interpretation as it indeed serves to promote the purpose of the Act (that is to allow the local authority to garner the means to perform the duties they are empowered to perform).

[77] Now, the respondent had in fact given a valuable reported case as a support to the court's preferred interpretation above. It is the case of *Majlis Daerah Dungun v. Tenaga Nasional Bhd* [2006] 2 CLJ 1078; [2006] 4 MLJ 731. Now the court shall reproduce the relevant portion of the Court of Appeal's decision in this said case and will proceed to categorically apply its relevance in the present case:

> The respondent's liability as a ratepayer is not a private debt but a public obligation. The appellant has to perform the duties and exercise the powers specified in the Act. As a local authority, it would require revenue to perform its duties. Section 63 of the Act provides it shall have the general control and care of all places within the local authority area which have been or shall be at any time set apart and vested in the appellant for the use of the public or to which the public shall at any time have or have acquired a common right. It may erect and maintain in any open public place buildings for public purposes. Section 72 of the Act provides certain powers to a local authority in relation to sanitation, the erection and managing of markets, lodging houses, stalls, public lavatories and abattoirs. It has also the power to safeguard and promote the public health, for example, to take all necessary and reasonably practical measures for preventing the occurrence of any infectious, communicable or preventable diseases. To carry out its duties the appellant requires revenue. Section 39 of the Act states that the revenue

of a local authority shall consist of all taxes, rates, rents, licenses, fees, dues and other sums of charges payable to the local authority by virtue of the provisions of the Act or any other written law. Thus, one of the principal source of revenue for the appellant, like any other local authority, is rates.

(a) Paying Rates Is A Statutory Duty

[78] From the passage of the Court of Appeal's *dicta* above, in reference to the general control and care of the local authority of its jurisdiction under s. 63, the powers of the local authority under s. 72 and the fact that the source of revenue for the local authority to perform its power is stated under s. 39, the court is of the considered view that the obligation to pay rates to enable the local authority to perform its powers for the public's benefit at large (and not any private benefit) is a statutory obligation. This is coherent with the power of the local authority under a. 127 of the Act to impose rates "as is deemed necessary".

[79] It is this court's judgment that when the appellant's properties are within the jurisdiction of the powers of the respondent, and to enable the respondent to perform its powers to render services to the public at large, the appellant is statutorily obligated to pay the rates as imposed by the respondent notwithstanding any contention on a supposed direct service to be rendered to the appellant.

(b) The Respondent As The Local Authority Is Not Obligated To Render Direct Services To The Appellant Especially Not Within The Properties Of The Appellant

[80] It is sufficiently compelling from the *dicta* above that "the respondent's liability as a ratepayer is not a private debt but a public obligation" to infer that there is no duty owed by the respondent in the present case to render services directly and personally to the appellant in its properties. The power of the local authority is to be exercised for the benefit of the public at large and not specific to the benefit of any private interest and/or interests. And indeed, the respondent does provide various services throughout the areas surrounding the appellant's properties, particularly the waste/rubbish disposal services and the public bus stops within the district of Kuala Selangor. (See exh. SJ-4, encl. 4)

[81] The appellant had contended that the bus stop services and the waste/rubbish disposal services are more focused to the benefit of the house owners rather than the appellant's estate's benefit owing to the alleged fact that the bus stops or areas for waste/rubbish disposal is closer to the housing areas. Thus, forms the core of their contention of absence of direct services. With due respect, this court entirely disagrees with the appellant's contention. There are no evidences at all afforded by the appellant in any of its affidavits that indeed the respondent had provided these two services mainly for the benefit of the residence within the surrounding area. There

is no evidence at all adduced by the appellant that the appellant or any of its employees, have never benefited from the array of bus stops and sanitation provided by the respondent. It is more probable than not that the appellant or any of its employees have utilised these services be it in sanitation or purposes of logistics and transportation.

[82] In fact, it is abundantly more obvious that the appellant had indeed directly benefited from the services rendered by the respondent. The public at large (inclusive of the appellant) benefit from the bus stops as a form of public transportation. Even assuming that every single one of the workers or members of the appellant's estate commutes by their own vehicle (which there is no proof of and verily unlikely to be the case), it does not deter the fact that they benefit from the public transportation being a viable alternative to ease out traffic to promote better flow and experience of transportation and logistics to and from within the jurisdiction of the respondent. Even if the appellant itself or any of its members are in their own private vehicle driving around the roads under the jurisdiction of the respondent, the appellant has indeed directly benefited from the respondent's services.

[83] With regards to the sanitation services, the public at large (inclusive of the appellant) directly benefits from the waste management which promotes a healthier environment to dwell and work (not necessarily in the appellant's estate alone but the public areas which are under the respondent's jurisdiction).

[84] This court reiterates that the duty to pay assessment rates is not a private debt but a public obligation. The rates are paid for the betterment and benefit of the public at large (which is not exclusive to the appellant's benefit alone). Furthermore, the respondent have already provided these services for the benefit of the public at large. Whether or not the respondent chooses by its own volition to reap benefit from it, is irrelevant. The services are there for the utility of the public at large (inclusive of the appellant). However, the appellant cannot selfishly eschew, avoid and/or abstain from their public obligation to pay the rates which are valuable to public at large to enable the respondent as the local authority to provide their services to the public's benefit at large merely because it may not or it has chosen not to benefit from it. Again, there are no evidences afforded by the appellant that it had not benefited from these services. The averment that the closest bus stop to the estate being 1.5 kilometers away from the estate is firstly, no excuse for the appellant to refuse to pay rates to enable the respondent to maintain these services for the public at large, and secondly, is not a ground to deem that the bus stop is intended for the main usage of house owners. Similarly so in regards to the waste/rubbish disposal services. There is no proof that it was provided for only for the benefit of the house owners and there is no proof that the appellant never benefited from it.

[85] Ultimately, the propriety of the imposition of rates is not hinged on the benefit afforded and given to any specific taxpayer and/or ratepayer, but is hinged on the benefit afforded to the public at large. Again, it is not a private debt as accurately and correctly put in the *dicta* of the Court of Appeal in the *Majlis Daerah Dungun* case.

[86] Even if assuming that the courts were to agree with the appellant, it is more probable than not that the appellant itself has benefited from the services rendered by the respondent. And it is more glaring and obvious that the appellant has not put forth a single inkling of evidence to prove that it has not benefited at all from the services.

[87] Thus, in cognisance of the above, it is this court's finding that firstly, the appellant may not eschew itself from its public and statutory obligation to pay rates for the benefit of the public at large. Secondly, it is not incumbent upon the respondent to render personal and direct services within the appellant's properties so as to obtain the rights to impose rates. It suffices that the respondent already renders the services that they are empowered to do for the benefit of the public at large. The rates are paid to enable the respondent perform the powers which are conferred upon it as the local authority for the benefit of the public at large. Thirdly, there are no evidences at all that the appellant has never benefited from the services rendered by the appellant. Fourthly, it is more probable than not that the appellant has indeed benefited from the services rendered by the respondent both directly and indirectly.

[88] There is also another contention raised by the appellant and this is with regards to the alleged unfair treatment of ratepayers. It was averred by the MPOA Director in his affidavit (encl. 7) that the respondent had allegedly been unfair in rendering services to six plantations owned by Sime Darby in that the respondent had provided waste/rubbish disposal services directly within Sime Darby owned lots and thereby the respondent had been unfair to the appellant as a ratepayer if compared to Sime Darby. The plaintiff sought to rely on the cases of *Arsenal Football Club Ltd v. Ende* [1979] AC 1, *Inland Revenue Comrs v. National Federation of Self-Employed and Small Businesses Ltd* [1981] 2 AER 93 and *Prudential Assurance Malaysia Bhd v. Kerajaan Malaysia* [2003] 6 CLJ 28.

[89] However, this court is of the view that the averment on unfair rendering of services is baseless without evidence and is a hearsay. There was no prove to support the averment and nothing was exhibited as evidence. It is a bare allegation devoid of any proof. Not only that it is baseless without evidence, the averment is a hearsay averment as it intends to put words into the mouth of the respondent. The averment at para. 8(d)(ii) of encl. 7 reads:

> (ii) Responden juga telah memberi perkhidmatan pemungutan sampah untuk 6 ladang-ladang tersebut Sime Darby itu.

[90] Clearly identifiable from the above averment is that the statement averred was not the MPOA Director's own statement but the alleged statement which was supposedly uttered by the respondent during the second meeting on 10 June 2014. Clearly, this is hearsay evidence. It is trite law that the court can never admit and consider hearsay evidences unless it falls within the specific exceptions under the Evidence Act. The appellant never submitted on these exceptions and it very unlikely that this case would fall within any of the exceptions.

[91] Now, there are contemporaneous documents which are derivative from the second meeting held. However, it is obvious from a plain reading of the minutes of the second meeting that the averment on the respondent rendering direct services within Sime Darby's plantation was nowhere recorded within the minutes. There was never any mention or complaint involving Sime Darby's plantations. In fact there was never any mention of Sime Darby within the second meeting's minutes. (See exh. SJ-3, encl. 4).

[92] In fact, it was the averment of the MPOA Director himself that he admitted that the minutes of the second meeting does not contain or record of the respondent's alleged agreement to provide services within the lots of the plantation owners. Paragraph 9 of encl. 7 reads:

> Saya faham bahawa minit-minit mesyuarat Jawatankuasa Responden yang berkaitan untuk 10.6.2014 ... tidak mengandungi apa yang dipersetujui oleh Responden bahawa Responden akan ukur bangunan-bangunan di kedua-dua ladang tersebut dan memberi perkhidmatan-perkhidmatan ...

[93] It does not strike any sense that the MPOA Director never saw it fit to at least inform, or communicate to the respondent regarding the supposed incomplete minutes of the second meeting. Having in mind of the heavy sentiment and reliance of the appellant on this issue involving Sime Darby, it is utterly strange and peculiar that never did anything to clarify or confirm the contents which are allegedly unrecorded.

[94] Notwithstanding the authorities forwarded on the fair treatment to taxpayers, the circumstances and the evidence of this case clearly does not hold water. Even in the face of these authorities, the evidences (in the minutes of the second meeting and encl. 7), the absence of evidence, and the fact that the averment was a hearsay evidence, the court is in a bind and is not able to draw any conclusion that there was any unfair treatment afforded against the appellant. There were simply no evidences at all to prove such allegation. In absence of any proof of such unfairness, the court cannot draw such inference of unfairness.

Ground III: The Annual Value Of The Properties Cannot Be Based On The Open Market Value Of The Properties

[95] Now, coming to the last ground, the appellant had contended that notwithstanding all of the above and the respondent's rights to impose rates, the respondent may not calculate the annual value and assessment rate based on the open market value of the appellant's properties.

[96] On this contention, the appellant forwarded its arguments in two folds. Those in which are; it is wrongful as the respondent had unlawfully relied unto proviso (c) of s. 2 of the Act and it is wrongful as the respondent allegedly had employed a different manner of calculation over Sime Darby's plantations.

Does This Case Fall Within Proviso (C) Of s. 2 Of The Act?

[97] It was submitted by the appellant that the calculation that was applied by the respondent (in using the open market value) falls squarely on s. 2 proviso (c). Counsel for the appellant further submitted that s. 2 defines "annual value" to mean the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes. Thus, generally annual value in other words is the reasonably expected gross rent payable in case the land was put to let. However, this definition is subject to certain provisos in which the valuation officer (in this case the respondent) may depart from this general meaning of annual value.

[98] And it is the appellant's case that the proviso relied upon by the respondent is proviso (c) which reads:

> (c) in the case of any land:
>
> **(i) which is partially occupied or partially built upon;**
>
> **(ii) which is vacant, unoccupied or not built upon;**
>
> (iii) with an incomplete building; or
>
> (iv) with a building which has been certified by the local authority to be abandoned or dilapidated or unfit for human habitation, the annual value shall be, in the case of subparagraph (i), either the annual value as hereinbefore defined or ten *per centum* of the open market value thereof at the absolute discretion of the Valuation Officer, and in the case of subparagraphs (ii), (iii) and (iv) the annual value shall be ten *per centum* of the open market value thereof as if, in relation to subparagraphs (iii) and (iv), it were vacant land with no buildings thereon and in all cases the local authority may, with the approval of the State Authority, reduce such percentages to a minimum of five *per centum*. (emphasis added)

[99] The appellant further argued that it was wrongful for the respondent to have relied upon the proviso (c) as Lot 27 is an agricultural land planted with palm oil while other lots of the estate were built with ancillary facilities for running an oil palm estate, including a guard house, office, staff bungalow and workers quarters and others. Thus, it is the contention of the appellant that the properties are fully occupied and was built upon and therefore, Lot 27 cannot fall within proviso (c) of s. 2.

[100] To support its argument, the appellant had referred to the Supreme Court's decision in the case of *Datuk Bandar Kuala Lumpur v. Bukit Jalil Estates Sdn Bhd & Another Case* [1988] 1 CLJ 763; [1988] 1 CLJ (Rep) 25 in which the Supreme Court had decided that (with regards to a rubber estate land) since "... the respondent in that case has cultivated the lots and used them for rubber tapping with exclusive possession, the lots are fully occupied."

[101] The appellant then continued that the same case of *Bukit Jalil* above also decided that since the respondent's (in that case) lot are all "agricultural land", and "are completely occupied and not vacant, they do not come under proviso (c) irrespective of whether they are built upon, not built upon or partially built upon, and in respect of them the annual value should be estimated gross annual rent".

[102] The appellant further submits that the approach in the Bukit Jalil case above had been followed in another case of *Ng Chin Siu & Sons Rubber Estate Sdn Bhd v. Datuk Bandar, Kuala Lumpur* [1994] 1 CLJ 283.

[103] Thus, in reliance of these cases above, the appellant contends that it is wrongful for the respondent to rely upon proviso (c) and departing from the initial definition of gross annual rent enumerated in s. 2 of the Act.

[104] From the outset with regards to this contention, it must be noted that this court has no intention to challenge or depart from the precedents above. However, due to the circumstances and evidence of this present case, the court does see it fit that the cases above must be distinguished from the present case. The reason being is this; the respondent in actual fact had relied on proviso (d) of s. 2 of the Act and not proviso (c). Upon close scrutiny of the documentary evidence forwarded by the parties, this court finds that it more probable than not that the respondent is actually relying on proviso (d) of s. 2 of the Act. This is already made clear during the first meeting held on 26 February 2013. It vividly clear from the minutes of the first meeting on 26 February 2013 that the decision of the respondent in making the assessment is not on the grounds that the land was partially occupied or partially built upon or was vacant. In actual fact in ascertaining the annual value of the properties, Puan Salinda (valuation officer) has made the evaluation on the presumption that the properties are vacant because of the difficulties to get sufficient information to be a benchmark to gauge or to evaluate the gross annual rent.

[105] This court is of the view that the appellant had somehow or rather misinterpreted the minutes of the first meeting. The minutes recorded were that:

> Puan Salinda binti Jamil, Jabatan Penilaian dan Pengurusan Harta memaklumkan bahawa kenaan cukai bagi ladang-ladang estet merujuk kepada peruntukan di bawah Seksyen 127 dan *asas penilaian pula telah mengambil kira nilaian tanah kosong (iaitu mengandaikan bahawa tanah tersebut kosong tanpa sebarang binaan atau tanaman di atasnya kerana kesukaran untuk mendapatkan maklumat hasil keuntungan melalui aktiviti di atas tanah tersebut)* ... (emphasis added)

[106] With the minutes of the first meeting (documentary evidence) the respondent clearly had indeed relied on proviso (d) as it was largely difficult for the respondent to estimate the gross annual rent, owing to the fact that the land was never let to any other persons and was personally worked by the appellant. It is compelling that the respondent would not have sufficient information to make this calculation of the estimated gross annual rent. Thus, in this instance, this case falls squarely on proviso (d) of s. 2 of the Act which reads:

> (d) where in respect of any particular holding, in the opinion of the Valuation Officer, **there is insufficient evidence to base a valuation of annual value upon**, the Valuation Officer may **apply such methods of valuation as in his opinion** appears appropriate to arrive at the annual value; (emphasis added)

[107] These minutes were never disputed by the appellant. As a matter of fact, the respondent had mentioned during the first meeting that it has faced "kesukaran mendapatkan maklumat" and with that position at hand, thus verily it falls squarely within the ambit of "insufficient evidence" under proviso (d) of s. 2 of the Act.

[108] Therefore, it is the finding of this court that respondent clearly placed reliance on proviso (d) of s. 2 of the Act and not proviso (c). The respondent had only presumed or "mengandaikan" that the land is in a vacant state and had not deemed that the land is indeed vacant. In actual fact, the decision of the respondent is not dependent on the variable that the appellant's properties were occupied, or built or otherwise but is on the fact that they had insufficient information to gauge the gross annual rent. Hence, in these circumstances, it is within the authority of the respondent, upon its opinion to apply any valuation method it sees appropriate.

Has The Respondent Used A Different Manner Of Evaluation On Sime Darby's Plantations Compared To The Appellant's Estate?

[109] It was first averred in the MPOA's Director's affidavit in encl. 7 and was later submitted by the appellant that the respondent should afford the same method of calculation as had been allegedly employed upon Sime Darby's plantations. It was averred at para. 8(d)(i) that:

satu kaji ukuran (survey) telah dijalankan oleh jabatan Responden yang berkaitan pada "estate lines sites" 6 ladang-ladang Sime Darby Bhd dalam Daerah Kuala Selangor untuk menentukan nilai bangunan-bangunan yang didirikan di ladang-ladang berkenaan. Saya juga sedar bahawa Responden kemudiannya mengurangkan kadar tahunan/taksiran secara ketara ke atas 6 ladang-ladang Sime Darby tersebut.

[110] The appellant repeatedly stated that the respondent had agreed and should employ the same manner of calculation as it had allegedly applied on Sime Darby's plantations. However, the line of evidences (even the appellant's own evidences) and also want of evidences seemingly defeat this contention. On this issue, this court poses this question. Are there any supporting or contemporaneous documents exhibited by the appellant as proof of this different method of calculation alleged?

[111] Firstly, the different method of calculation was raised by the MPOA's Director in his affidavit encl. 7. To support his contention, the MPOA's Director had never see it fit to exhibit anything to the effect of proving this contention. It is verily peculiar and questionable as to the manner in which the MPOA's Director was able to know that such "survey" was conducted without having any documents to prove it. If indeed the MPOA's Director knew of this survey and its decision and/or conclusion, it must have been that it would be within his possession such documents which he had derived his information from. If not, there would be an obvious and serious absence and want of evidence. The most natural conduct to prove such averment is to exhibit such 'survey' but the appellant had failed to do so. Thus, in the absence of any proof, the averment is merely hearsay evidence. Secondly, the MPOA's Director himself admitted that he did not have evidence to support his contention. It was in fact admitted in the same affidavit that the minutes of the second meeting does not contain any mention of the survey regarding Sime Darby Bhd or the agreement that the respondent would afford the same method of calculation to the appellant.

Saya faham bahawa minit-minit mesyuarat Jawatankuasa Responden yang berkaitan untuk 10.6.2014 ... tidak mengandungi apa yang dipersetujui oleh Responden bahawa Responden akan ukur bangunan-bangunan di kedua-dua ladang tersebut dan memberi perkhidmatan-perkhidmatan ...

Thirdly, the MPOA's Director had also admitted that there is never any mention of this survey or method of calculation as well as the respondent's agreement to use the alleged method of calculation applied onto Sime Darby Bhd's plantations.

[112] Clearly, the minutes of the first meeting had only recorded that the "cadangan" or proposal (to only evaluate the buildings erected on the lands)

was voiced out. However there was never any mention of Sime Darby's survey or the respondent's agreement to use the calculation alleged. The minutes regarding this proposal reads:

> 3.1 Cadangan untuk membuat penilaian ke atas bangunan sahaja dan nilaian secara 'token' ke atas tanah
>
> Tindakan: Jabatan Penilaian dan Pengurusan Harta, MDKS

There was never any concluded agreement that the respondent ought to employ such method of calculation. In fact, it was admitted in the appellant's own submission that what was decided in the first meeting was that the respondent would only "consider a proposal to just value the buildings on the estate lands". (See para. 5(d)(i), submissions of appellant)

[113] In fact, this court opines that from the admission and minutes of the first meeting above, it is apparent that the respondent had never intended to forego the evaluation of the inherent value of the land itself, to be calculated together with the value of the buildings on the estate lands. The proposal also includes the "token value" on the lands.

[114] It would be too outreaching if the court were to give meaning to the proposal to be implied with what the appellant averred. There was no other evidence led to this effect. The court cannot afford to draw such assumption. Furthermore, an evaluation must necessarily and logically include the inherent value of the land itself, and not just the occupation or buildings on the land. A land's value is not measured merely on its structures or plantation. A vacant land might as well be more valuable comparatively to an occupied land or land occupied with agriculture owing to its location, facilities and services available in the surrounding. Even the minutes of the meeting does not correspond with the appellant's contention. The evaluation proposed is not merely on the building only but also inclusive of the value of the land itself.

[115] It is apparent here even in the first meeting itself (which was never disputed by the appellant) that the proposal does not forego the evaluation on the land itself.

[116] In this regards, firstly, there are no evidences at all to prove that the respondent had given a different method of calculation on the annual value/assessment to Sime Darby Bhd. Secondly, there are no evidences at all to prove that the respondent had agreed to the proposal to evaluate only the buildings and plantations in the appellant's estate to get the annual value/assessment. In fact, the court finds that the MPOA's Director himself has admitted to this want of evidence supporting this contention.

[117] In fact, the respondent has been kind enough to base its calculation on the open market value of the appellant's properties in the year 1996, which definitely would be cheaper if compared to the value of the

properties on the current market value. Not only that the respondent is within its rights to use the open market value as its basis of calculation, the annual value calculated is already to the advantage of the appellant.

[118] Therefore, this court finds that the respondent's decision to base their calculation on the open market value of the appellant's estate is a valid method of calculation by the purview of proviso (d) of s. 2 of the Act. Furthermore, there was never any proof of any different method of calculation (to Sime Darby) and any agreement to apply that alleged method of calculation as was asserted by the appellant.

[119] Based on the aforementioned reasons, the appellant's appeal is dismissed with costs.

On The Issue Of Costs

[120] Having heard the submission from both counsels for the appellant and the respondent, the court hereby orders the appellant to pay the respondent RM8,000 in costs.